

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES C. KRETEK, as Personal Representative
of the estate of Christopher Aparicio, deceased,

Plaintiff,

v.

No. 11-676 KG/GBW

BOARD OF COMMISSIONERS OF
LUNA COUNTY, JOHN KREHBIEL,
JOSH ELFORD, JONATHAN CHAVEZ,
JOHN ROBERT MCGRAEL, and
YOLANDA EDWARDS,

Defendants.

ORDER

This matter comes before the Court on Plaintiff's Deposition Testimony Designations (*doc. 287*), Defendants' Deposition Testimony Designations (*doc. 288*), Plaintiff's Objection to Defendants' Deposition Testimony Designations (*doc. 301*), and Defendants' Objections to Plaintiff's Deposition Testimony Designations (*doc. 304*). Both sides seek to designate portions of Austin Barshaw's August 15, 2012 and August 6, 2013 deposition testimony, Mary Aparicio's October 2, 2012 deposition testimony, and David Aparicio's October 2, 2012 deposition testimony. Both sides object to certain designations by the opposing party. On February 25, 2014, at the Court's request, United States Magistrate Judge Wormuth held a hearing on these matters. With the exception of two related objections, Judge Wormuth

made preliminary rulings on all objections. Having reviewed those rulings, the Court herein adopts them and the basis given on the record. Specifically, the Court orders as follows:¹

I. AUSTIN BARSHAW'S AUGUST 15, 2012 DEPOSITION

A. Plaintiff's Objections

1. Plaintiff's objections at 8:24-25 and 9:13-15 are SUSTAINED, and 9:1, 8-12 are to be included.
2. Plaintiff's objection at 15:15-21 is SUSTAINED IN PART, and 15:22-24 and 16:1-2 are to be included.
3. Plaintiff's objection at 22:1-25 is OVERRULED.
4. Plaintiff's objection at 23:4-8 is OVERRULED.
5. Plaintiff's objection at 25:22-24 is SUSTAINED IN PART, and 25:25 is to be included.
6. Plaintiff's objection at 26:1-6 is OVERRULED.
7. Plaintiff's objection at 27:25 is OVERRULED.
8. Plaintiff's objection at 28:1, 22-25 is OVERRULED.
9. Plaintiff's objection at 29:1, 12-25 is OVERRULED.
10. Plaintiff's objection at 30:13-21 is OVERRULED.
11. Plaintiff's objection at 38:24-39:9 is SUSTAINED IN PART. The Court will admit only 38:15-17 and 38:21-23.

¹ The rulings listed below should be consistent with the preliminary rulings of Judge Wormuth. If counsel believes that any ruling described herein is inconsistent with the preliminary oral ruling, counsel should immediately file a motion to clarify identifying the inconsistency.

12. Plaintiff's objection at 40:12-43:2 is SUSTAINED.
13. Plaintiff's objection at 43:15-23 is SUSTAINED.
14. Plaintiff's objection at 45:20-25 is SUSTAINED.
15. Plaintiff's objection at 46:5-21 is SUSTAINED.
16. Plaintiff's objection at 50:21-51:17 is OVERRULED.
17. Plaintiff's objection at 52:1-53:3 is SUSTAINED.
18. Plaintiff's objection at 53:14-54:11 is SUSTAINED.
19. Plaintiff's objection at 60:9-11 is OVERRULED.

II. AUSTIN BARSHAW'S AUGUST 6, 2013 DEPOSITION

A. Plaintiff's Objections

1. Plaintiff's objection at 5:18-19 is OVERRULED.
2. Plaintiff's objection at 5:20-23 is SUSTAINED.
3. Plaintiff's objections at 6:5-9 and 6:22-9:22 are SUSTAINED.
4. Plaintiff's objection at 11:6-23 is SUSTAINED.
5. Plaintiff's objection at 13:3-19 is SUSTAINED.
6. Plaintiff's objection at 15:24-16:4 is SUSTAINED.
7. Plaintiff's objection at 19:17-20:10 is SUSTAINED.
8. Plaintiff's objection at 20:19-21:8 is SUSTAINED.
9. Plaintiff's objection at 23:17-24:25 is SUSTAINED.
10. Plaintiff's objection at 25:22-26:22 is SUSTAINED.

11. Plaintiff's objection at 29:12-30:10 is SUSTAINED.
12. Plaintiff's objection at 33:1-34:25 is SUSTAINED.
13. Plaintiff's objection at 35:7-14 is SUSTAINED.
14. Plaintiff's objection at 36:11-37:25 is SUSTAINED.
15. Plaintiff's objection at 38:7-11 is OVERRULED.
16. Plaintiff's objection at 39:25-41:13 is SUSTAINED.
17. Plaintiff's objection at 42:5-43:22 is SUSTAINED.
18. Plaintiff's objection at 45:9-46:10 is SUSTAINED IN PART such that 46:3-10 is excluded.
19. Plaintiff's objection at 47:11-22 is OVERRULED.
20. Plaintiff's objection at 49:1-6 is SUSTAINED.
21. Plaintiff's objection at 50:7-14 is SUSTAINED.
22. Plaintiff's objection at 51:12-52:11 is OVERRULED.
23. Plaintiff's objection at 55:10-56:3 is OVERRULED as moot.
24. Plaintiff's objection at 59:9-24 is SUSTAINED.
25. Plaintiff's objection at 62:8-64:12 is SUSTAINED.
26. Plaintiff's objection at 139:1-18 is SUSTAINED.
27. Plaintiff's objection at 140:5-141:4 is OVERRULED.

B. Defendants' Objections

1. Defendant's objection at 54:12-55:9 is SUSTAINED.
2. Defendant's objection at 57:10-58:14 is SUSTAINED.
3. Defendant's objection at 60:3-22 is SUSTAINED.
4. Defendant's objection at 73:17-74:9 is SUSTAINED. Defendant's objection to line 74:10-75:5 is OVERRULED.
5. Defendant's objection at 89:14-91:1 is WITHDRAWN.
6. Defendant's objection at 91:7-132:25 is WITHDRAWN pursuant to an agreement between the parties regarding the portions of this designation that will be offered at trial.
7. Defendant's objection at 135:10-138:21 is WITHDRAWN.

III. MARY APARICIO'S OCTOBER 2, 2012 DEPOSITION

A. Plaintiff's Objections

1. Plaintiff's objection at 6:14-16 is OVERRULED.
2. Plaintiff's objection at 6:25-7:1 is SUSTAINED.
3. Plaintiff's objection at 7:5-16 is SUSTAINED.
4. Plaintiff's objection at 8:9-21 is SUSTAINED.
5. Plaintiff's objection at 9:6-22 is SUSTAINED.
6. Plaintiff's objection at 12:2-15 is SUSTAINED.
7. Plaintiff's objection at 12:22-13:3 is SUSTAINED.

8. Plaintiff's objection at 13:13-23 is OVERRULED.
9. Plaintiff's objection at 14:2-15 is OVERRULED.
10. Plaintiff's objection at 15:2-25 is SUSTAINED.²
11. Plaintiff's objection at 16:2-13 is SUSTAINED.³
12. Plaintiff's objection at 17:9-21 is SUSTAINED.
13. Plaintiff's objection at 18:9-23 is OVERRULED.
14. Plaintiff's objection at 19:15-22 is SUSTAINED.

B. Defendants' Objections

1. Defendants' objection at 10:22-11:7 is OVERRULED.
2. Defendants' objection at 20:16-23 is WITHDRAWN with Plaintiff's agreement to supplement with 21:1-5.

IV. DAVID APARICIO'S OCTOBER 2, 2012 DEPOSITION

A. Plaintiff's Objections

1. Plaintiff's objection at 10:2-11:2 is SUSTAINED.
2. Plaintiff's objection at 11:11-13 is SUSTAINED.
3. Plaintiff's objection at 12:1-5 is OVERRULED.
4. Plaintiff's objection at 12:11-16 is OVERRULED.
5. Plaintiff's objection at 13:9-19 is OVERRULED.

² Judge Wormuth took this objection under advisement at the hearing. The Court will sustain the objection pursuant to Fed. R. Civ. P. 403.

³ Judge Wormuth took this objection under advisement at the hearing. The Court will sustain the objection pursuant to Fed. R. Civ. P. 403.

6. Plaintiff's objection at 14:18-15:22 is SUSTAINED.
7. Plaintiff's objection at 16:1-10 is SUSTAINED.
8. Plaintiff's objection at 16:15-23 is SUSTAINED.
9. Plaintiff's objection at 17:17-18:1 is SUSTAINED.
10. Plaintiff's objection at 18:12-19:17 is SUSTAINED.
11. Plaintiff's objection at 19:24-25 is SUSTAINED.
12. Plaintiff's objection at 20:1-10 is OVERRULED.
13. Plaintiff's objection at 21:1-7 is OVERRULED.
14. Plaintiff's objection at 21:25-22:7 is OPVERRULED.
15. Plaintiff's objection at 25:1-3 is OVERRULED.
16. Plaintiff's objection at 26:1-6 is SUSTAINED.
17. Plaintiff's objection at 26:10-14 is SUSTAINED.
18. Plaintiff's objection at 26:15-22 is OVERRULED, except as to the phrase "the one he hit" at 26:16, which is excluded.
19. Plaintiff's objection at 26:23-27:6 is OVERRULED, except as to 26:23, which is excluded.
20. Plaintiff's objection at 27:7-28:11 is OVERRULED.
21. Plaintiff's objection at 28:12-16 is SUSTAINED.
22. Plaintiff's objection at 28:22-23 is SUSTAINED.
23. Plaintiff's objection at 30:8-9 is OVERRULED.
- 24. Plaintiff's objection at 32:1-33:5 is SUSTAINED.**

B. Defendants' Objections

1. Defendants' objection at 22:24-23:4 is OVERRULED.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE